



Paper No. 3

Docket Administrator (Room 3C-512)
Lucent Technologies
600 Mountain Avenue
P.O. Box 636
Murray Hill, New Jersey 07974-0636

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**OFFICE OF PETITIONS
A/C PATENTS**

In re Application of
Andrew D. Flockhart et al.
Application No. 09/776,937
Filed: June 17, 1999
Attorney Docket No. 15-19-1

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: **DECISION DISMISSING PETITION**
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This is a decision on the petition filed June 17, 1999, requesting that an application of Andrew D. Flockhart et al. entitled "Customized Applet-on Hold Arrangement" (attorney docket No. 15-19-1) be accorded a filing date of December 11, 1998. The Office sincerely apologizes for the delay in responding to the instant petition and any inconvenience caused to petitioners by this delay.

The petition and duplicate application papers have been assigned application No. 09/776,937 for identification purposes. All future correspondence concerning this application should be directed to that application number.

Petitioners allege that the original application papers were deposited in Express Mail service on December 11, 1998, in accordance with the procedures set forth in 37 CFR 1.10 and that the application is entitled to the date of deposit in Express Mail service as the filing date. In support, petitioners have supplied a copy of the original application papers showing the Express Mail label No. EE204794743 thereon and a copy of Express Mail label No. EE 204794743US. However, no "date-in" is shown on the Express Mail label. The only information on the Express Mail label is the address information completed by the customer. The petition states that a "copy of the Express Mail label was not received back by petitioner from the U.S. Postal Service." The petition also states that the return postcard receipt that accompanied the application was not received back from the U.S. Patent and Trademark Office.

37 CFR 1.10(e) sets forth procedures for filing a petition to the Commissioner to accord a filing date as of the date of deposit with the U.S. Postal Service (USPS), where correspondence deposited as Express Mail is never received by the Office. Such a petition must: (1) be filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence; (2) include a showing that the number of the Express Mail mailing label was

placed on each piece of correspondence prior to the original mailing; (3) include a true copy of the originally deposited correspondence showing the number of the Express Mail mailing label thereon, a copy of any returned postcard receipt, a copy of the Express Mail mailing label showing the "date-in" or other official notation entered by the USPS; and (4) include a statement which establishes, to the satisfaction of the Commissioner, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.

In this case, the petition is not accompanied by a copy of the Express Mail mailing label showing the "date-in" or other official notation entered by the USPS showing a date of deposit of December 11, 1998, or any other date. Petitioners have not supplied any USPS record to show that the Express Mail package in question was actually deposited in Express Mail service with the USPS on December 11, 1998, or any other date.

Applicants' attention is directed to 37 CFR 1.10(b) which reads, in part, as follows:

Correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the "Express Mail" mailing label with the "date-in" clearly marked. Persons dealing indirectly with the employees of the USPS (such as by deposit in an "Express Mail" drop box) do so at the risk of not receiving a copy of the "Express Mail" mailing label with the desired "date-in" clearly marked.

It is unfortunate that applicants chose to deposit a paper as important as a patent application in Express Mail without immediately obtaining an Express Mail receipt showing the desired date of deposit.

The petition is dismissed. No petition fee is required and none has been charged.

Any request for reconsideration should be filed within **TWO MONTHS** of the date of this decision to be considered timely. See 37 CFR 1.181(f). Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Patent Legal Administration

By hand: Crystal Plaza Four, Suite 3C23
2201 South Clark Place
Arlington, VA

The application is entitled to a filing date of June 17, 1999, the date of receipt in the Office of the duplicate application papers.

A signed oath or declaration in compliance with 37 CFR 1.63 is missing. Accordingly, applicants are given **TWO MONTHS** from the date of this decision to file a signed oath or declaration in compliance with 37 CFR 1.63 and the \$130.00 surcharge set forth in 37 CFR 1.16(e) in order to avoid abandonment of the application. This time period may be extended pursuant to 37 CFR 1.136(a). The response should be directed to the attention of Initial Patent Examination Division.

Receipt is acknowledged of the information disclosure statement filed June 17, 1999.

The application is being forwarded to Initial Patent Examination Division to await the oath or declaration and the surcharge required above and for further processing with a filing date of **June 17, 1999**, including charging of the filing fee as authorized in the transmittal letter.

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 306-5586.



Eugenia A. Jones
Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy